

REMARKS

Favorable reconsideration of this application, as presently amended, is respectfully requested.

Claims 10-18 are presently active in this case, Claim 9 have been canceled, Claims 17-18 added and Claims 10-11 and 13-16 amended by the present amendment, and Claims 1-8 having previously been cancelled.

In the outstanding Official Action, Claims 9-16 were rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Claims 9-12, 14 and 16 were further rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent 5,503,141 to Kettl et al. Claim 13 was rejected under 35 U.S.C. § 103 as being unpatentable over Kettl et al in view of U.S. Patent 4,961,420 to Cappa et al. Claim 15 was rejected under 35 U.S.C. § 103 as being unpatentable over Kettl et al in further view of U.S. Patent 3,910,269 to Anside et al.

First, Applicant acknowledge with appreciation the courtesy of an interview granted to Applicant's attorney on August 15, 2002, at which time the outstanding issues in this case were discussed. During the interview, it was proposed to replace claim 9 with new claim 17 as presented herewith and arguments substantially as hereinafter developed were presented in support of patentability of new claim 17. However, no agreement was reached, pending the Examiner's detailed reconsideration of the application upon formal submission of an Amendment.

In response to the several grounds for rejection, Claim 9 has been cancelled and replaced by new Claim 17 which is drafted so as clearly NOT to positively set forth a human being or a human anatomy as being an element of the claimed combination. On the contrary, Claim 17 generally avoids reference to the human anatomy, with one exception. That exception is a reference to the location "at which a user's mouth is adapted to be positioned

in the mask.” Once again, it is clear that the “user’s mouth” is not an element of the claimed combination, and accordingly the outstanding rejection under 35 U.S.C. § 101 is believed to have been overcome. If, however, the Examiner disagrees, the Examiner is invited to telephone the undersigned who will be happy to work with the Examiner in a joint effort to limit the claimed invention to statutory subject matter.

In response to the several grounds for rejection on the merits, new Claim 17 has been drafted to clarify the claimed invention, and in particular, to clarify the arrangement and structure of the previously recited mouth-piece. To that end, new Claim 17 states that the mouth-piece is tubular and is mounted in front of the first microphone capsule with the microphone capsule positioned between the flexible cap and the mouth piece. New Claim 17 further states that the mouth piece has a distal end away from the microphone capsule and defining an aperture turned towards a center of a location at which a user’s mouth is adapted to be positioned in the make. New Claim 17 further defines the mouth-piece as having a longitudinal axis passing through a center point of the location and that the aperture defines a plane which is substantially perpendicular to the longitudinal axis. Accordingly, new Claim 17 is fully consistent with Applicant’s disclosure shown in Figures 2 and 3, for example, and no new matter has been added.

Also submitted herewith is new claim 18 which is directed to the dimensioning of the mouth-piece of the present invention, whereby speech is channeled from the location at which the lips of a user are adapted to be located to the microphone capsule. New Claim 18 indicates that the opening of the mouthpiece at the distal end adjacent the location where the mouth of a user is adapted to be placed is larger than an opening at an end of the mouth-piece facing the microphone capsule, as is readily evident from the disclosure shown in Figure 2, for example. This structure is believed advantageous both for channeling speech to the

microphone capsule and blocking out noise otherwise existing in the flexible cap of the claimed breathing mask. No new matter is believed raised by these changes.

Consistent with newly submitted Claim 17, the dependent Claims 10, 11 and 13-16 have been amended to depend from Claim 17. Further, Claim 10 has been amended to define the ellipse of the aperture of the mouth-piece as extending laterally towards the sides of the mask, thereby avoiding reference to human anatomy. Also, a typographical error has been corrected in Claim 16. The above changes to the dependent claims are not believed to raise a question of new matter.

Contrary to Applicant's invention as recited in new Claim 17, the applied Kettl et al patent discloses a microphone mounting structure for mounting a microphone to a respiratory mask through a hole in the respiratory mask, in which as shown in Figure 5, for example, the microphone 4 is disposed at a distal end of the microphone mounting structure 2 within the mask 6. No mouthpiece is provided, and the microphone is not disposed between the mask and a mouth-piece as recited in new Claim 17. Thus there is no structure by which speech is channeled essentially directed from the location at which a user's mouth is adapted to be positioned to a microphone, and noise within the mask is largely blocked from reaching the microphone, as is achieved by means of the mouth-piece of Applicant's claimed invention. In view of this deficiency, it is respectfully submitted that new Claim 17 patentably defines over the Kettl et al patent.

The remaining references of record have also been considered, but are deemed no more pertinent to the question of patentability than the Kettl et al reference above discussed. Of these references U.S. Patent 4,718,415 to Bolnberger et al, is of interest for its disclosure of a speaking diaphragm 6 held in a circular recess of a shoulder by a screw ring 9. Clearly, the screw ring 9 is used solely to maintain the diaphragm 6 in place against the shoulder, and does not perform a mouth piece function. Therefore, Applicant's invention as recited in new

Claim 17 is believed patentably distinguishing over Bolnberger et al whether considered alone or in combination with the Kettl et al reference. In view of the apparent patentability of Claim 17, Claims 10-16 and 18 dependent upon Claim 17 are also believed patentably distinguishing.

Consequently, in view of the present amendment and in light of the above discussion, Claims 10-18 are believed to define statutory subject matter and are believed to patentably define over the cited prior art. The present application is believed to be in condition for allowance, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



22850

(703) 413-3000
Fax No. (703) 413-2220
EHK/mlh

A handwritten signature in black ink, appearing to read 'Gregory J. Maier', written over a horizontal line.

Gregory J. Maier
Attorney of Record
Registration No. 25,599
Eckhard H. Kuesters
Registration No. 34,423

I:\atty\EHK\Amend-Responses\208822US.am.wpd

Marked-Up Copy
Serial No: 09/831,899

Amendment Filed on:
October 8, 2002

IN THE CLAIMS

Please amend Claims 10, 11, and 13-16 as follows:

10. (Amended) Mask according to claim [9] 17, wherein the mask has a top, bottom and opposed sides, and the aperture of the mouth-piece is elliptical with a greatest dimension of the ellipse [being parallel to the junction line of the lips] extending laterally toward the sides of the mask.

11. (Amended) Mask according to claim [9] 17, wherein the mouthpiece has an acoustic screen positioned in the aperture.

13. (Amended) Mask according to claim [9] 17, further comprising a baffle fixedly joined to the flexible cap and positioned between the first microphone capsule and the exhalation port.

14. (Amended) Mask according to Claim [9] 17, further comprising a cable and one of two complementary connection pieces of a releasable connector, connected to a first end of the cable, wherein a second end of the cable is directly connected to the first microphone capsule.

15. (Amended) Mask according to claim [9] 17, further comprising plural catches fixedly joined to the flexible cap and mounted substantially perpendicularly to an external face of the flexible cap.

16. (Amended) Mask according to claim [9] 17, further comprising a second microphone capsule, and wherein the first and second [microphase] microphone capsules are mounted side by side on a base of the mouth-piece.

17. (New).

18. (New).